

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0525
)	
Blackstone Calling Card, Inc.)	NAL/Acct. No. 200632080091
)	
Apparent Liability for Forfeiture)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: December 16, 2005**Released: December 19, 2005**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (“NAL”), we find that Blackstone Calling Card, Inc. (“Blackstone”) apparently violated Commission orders by willfully and repeatedly failing to respond to directives of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Based on our review of the facts and circumstances of this case, and for the reasons discussed below, we find that Blackstone is apparently liable for a monetary forfeiture in the amount of \$20,000.

II. BACKGROUND

2. Blackstone is a Florida-based company that characterizes itself as “one of the country’s largest providers of prepaid telecommunications products and services.”¹ Blackstone offers various services and products to the public, including a variety of prepaid calling cards.² On its website, Blackstone offers Blackstone-labeled calling cards, among other products, directly to the public for a fee.³

3. On March 30, 2004, Bureau staff sent a letter to Blackstone requesting information pertaining to Blackstone’s compliance with section 64.1195 of the Commission’s rules.⁴ Blackstone provided certain contact information requested and an unsupported statement that “Blackstone Calling Card, Inc., is not a carrier.”⁵

¹ www.blackstoneonline.com.

² *See id.*

³ *See id.* Blackstone-labeled calling cards direct customers to Blackstone’s website to obtain assistance and information regarding card services.

⁴ *See* letter from Hugh Boyle, Chief Auditor, Investigations and Hearings Division, Enforcement Bureau, to Blackstone dated March 30, 2004 (“March 30 Audit Letter”).

⁵ Electronic mail message from Tania Diblin, Legal Assistant, Blackstone, dated April 16, 2004.

4. After determining that Blackstone appeared to have failed to timely register with the Commission or timely file required Telecommunications Reporting Worksheets (“Worksheets”), the Bureau issued a letter of inquiry (“LOI”) to Blackstone on October 21, 2004.⁶ The LOI directed Blackstone, among other things, to submit a sworn written response to a series of questions relating to Blackstone’s apparent failure to register and file Worksheets and to make mandated federal telecommunications regulatory program payments. On December 20, 2004, Blackstone provided an incomplete response to the LOI and stated that Blackstone “has never provided any telecommunications services,” “is not required” to file Worksheets, contribute to the federal universal service fund (“USF”), or pay regulatory fees, and “is solely a distributor of prepaid phone cards.”⁷ Contrary to the directions of the LOI, however, Blackstone did not provide financial statements, tax returns, or specific identification of its alleged non-telecommunications products, services and associated revenue. In addition, the certification Blackstone supplied to support its response did not contain a statement that it was made under penalty of perjury and thus failed to conform to Commission Rule 1.16, 47 C.F.R. § 1.16, as required in the LOI.⁸

5. As a result of Blackstone’s inadequate and incomplete response, the Bureau was compelled to send a second LOI to Blackstone on June 28, 2005, requesting additional information that would permit the Bureau to examine Blackstone’s claim, directing it to provide complete responses to inquiries in the original LOI, and agreeing to hold in abeyance other pending inquiries until the Bureau reviewed the additional responses. The June 2005 LOI also warned Blackstone that its failure to respond fully to the Bureau’s LOI could subject Blackstone to potential enforcement action.⁹ Blackstone failed to respond to the June 28, 2005 LOI in any manner. Blackstone also failed to respond to telephone messages left by Bureau staff regarding Blackstone’s continuing failure to respond. To date, the Bureau has not received from Blackstone a complete response to the October 21, 2004 LOI or any response to the June 28, 2005 LOI.

III. DISCUSSION

A. Apparent Violation

6. Under section 503(b)(1) of the Communications Act of 1934, as amended (the “Act”), any person who is determined by the Commission to have willfully or repeatedly failed to comply with

⁶ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Luis Arias, Blackstone, dated October 21, 2004. The LOI specifically required Blackstone to provide relevant information with respect to Blackstone and any affiliate, predecessor-in-interest, parent company, subsidiary, director, officer, employee, and agent.

⁷ Letter from Luis Arias, Blackstone, to Carla Conover, Investigations and Hearings Division, Enforcement Bureau, dated December 20, 2004 (“*Incomplete Response*”).

⁸ Failure to provide a sworn statement supporting an LOI response can, by itself, subject an entity to enforcement action. *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589 (2002) (“*SBC Forfeiture Order*”).

⁹ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Luis Arias, Blackstone, dated June 28, 2005. Blackstone’s receipt of the letter is shown by confirmation of the facsimile transmission to the Blackstone facsimile number supplied by Blackstone in response to the March 30 Audit Letter and to which both LOIs were sent.

any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹¹ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act¹² and the Commission has so interpreted the term in the section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁵ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁶ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission order or rule.¹⁷

7. Sections 4(i), 4(j), 218, and 403 of the Act afford the Commission broad authority to investigate the entities it regulates. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions,” and section 4(j) states that “the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” Section 403 of the Act grants the Commission “full authority and power at any time to institute an inquiry, on its own motion . . . relating to the enforcement of any of the provisions of this Act.”¹⁸

8. We first conclude that under the Act and Commission rules Blackstone is a carrier providing telecommunications services. Blackstone stated in its partial LOI response that it is solely a distributor of carriers’ prepaid phone cards and made the unsubstantiated assertion that Blackstone itself has never provided telecommunications service.¹⁹ Blackstone, however, failed to provide documentation

¹⁰ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1); *see also* 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464).

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹³ *See, e.g., Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) (“*Southern California Broadcasting Co.*”).

¹⁴ *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, ¶ 9.

¹⁶ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁷ *See, e.g., SBC Communications, Inc.*, 17 FCC Rcd at 7591.

¹⁸ 47 U.S.C. § 403. *See also* 47 U.S.C. § 154(i), (j).

¹⁹ *Incomplete Response*, p.1.

to support that assertion and, because it did not respond to the Bureau's follow-up LOI, Blackstone did not provide any documents or information in response to that LOI that allowed the Bureau to substantiate its assertion. In the absence of such substantiating evidence, contrary to Blackstone's assertion, we conclude it is a provider of telecommunications services. Under the Act, telecommunications service is "the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used."²⁰ Additionally, the Act defines a telecommunications carrier as any provider of telecommunications services.²¹ In this regard, the Commission has long held that calling card providers are providing telecommunications services.²² Based on information collected in this investigation, we know that Blackstone apparently offers telecommunications service for a fee directly to the public, for example, by offering interstate and international telecommunications service through Blackstone-labeled calling cards marketed on its website. Thus, it appears Blackstone is providing telecommunications services. We therefore find that Blackstone is a carrier providing telecommunications service and subject to the regulations governing all such carriers.²³

9. We next find that Blackstone apparently violated Commission orders by failing on multiple occasions to respond to Bureau inquiries. Section 218 of the Act specifically authorizes the Commission to "obtain from . . . carriers . . . full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."²⁴ Sections 4(i), 4(j), and 403 of the Act unequivocally grant the Commission the power to direct responses to inquiries in order to execute its functions.²⁵ As indicated above, the Bureau directed Blackstone to provide certain documents and information to enable the Commission to perform its enforcement function and evaluate allegations that Blackstone violated Commission rules. Blackstone received both LOIs. Blackstone received the October 21, 2004 LOI as evidenced by its own incomplete response. Blackstone also received the June 28, 2005 LOI, sent by the Bureau via U.S. mail and by facsimile to the facsimile number provided by Blackstone in response to the March 30 Audit Letter, as evidenced by confirmation of the facsimile transmission. Further, in July 2005, Bureau staff took the additional step of attempting to contact Blackstone by telephone. Staff left messages with Blackstone employees for the President and Chief Executive Officer of Blackstone, Luis Arias, addressee of the LOIs and signatory of Blackstone's incomplete response to the first LOI. In those messages, Bureau staff specifically stated that the Bureau had not received the required response to the June 2005 LOI. Despite the Bureau's significant efforts to elicit information from Blackstone, as of the date of this NAL, Blackstone has failed to provide a complete response to the Bureau's first LOI and failed to respond to the Bureau's second LOI at all. We

²⁰ 47 U.S.C. § 153(46).

²¹ *Id.*, § 153(44).

²² See, e.g., *AT&T Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826 (2005); *Time Machine*, Memorandum Opinion and Order, 11 FCC Rcd 1186 (CCB 1995).

²³ We specifically preserve our ability to pursue additional enforcement action based on Blackstone's failure to satisfy the requirements of the Act or Commission rules.

²⁴ 47 U.S.C. § 218.

²⁵ 47 U.S.C. §§ 154(i),(j), & 403.

conclude that Blackstone's continuing failure to respond to the Bureau's LOIs constitutes an apparent willful and repeated violation of Commission orders.²⁶

B. Forfeiture Amount

10. Section 503(b)(1) of the Act provides that any person that willfully or repeatedly fails to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.²⁷ Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.²⁸ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."²⁹

11. Section 1.80 of the Commission's rules and the Commission's *Forfeiture Policy Statement* establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.³⁰ Blackstone's failures to respond occurred despite attempts by Bureau staff to call Blackstone's attention to the importance of responding to LOIs. We find that the lack of a complete response to the first LOI and the total failure to respond to the second LOI, notwithstanding the Bureau's significant efforts to contact Blackstone executives, warrants a substantial increase to this base amount. Misconduct of this type exhibits a disregard for the Commission's authority and, more importantly, threatens to compromise the Commission's ability to adequately investigate violations of its rules. In this case, such misconduct inhibits our ability adequately to detect and deter potential rule violations in an area of critical importance to the Commission --

²⁶ See, e.g., *SBC Forfeiture Order*, 17 FCC Rcd at 7599-7600, ¶¶ 23-28 (ordering \$100,000 forfeiture for egregious and intentional failure to certify the response to a Bureau inquiry); *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19898 n. 36 (2003) (noting delayed response to an LOI is considered dilatory behavior which may result in future sanctions); *BigZoo.Com Corporation*, Notice of Apparent liability for Forfeiture and Order, 19 FCC 24437 (Enf. Bur. 2004), Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) ("*BigZoo*") (ordering \$20,000 forfeiture for failure to respond to an LOI); *American Family Association, Licensee of Station KBMP(FM), Enterprise, Kansas*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 14072, Forfeiture Order, 19 FCC Rcd 22025 (Enf. Bur. 2004) (ordering \$3,000 forfeiture against non-commercial educational station for a partial response to an LOI); *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for non-responsive reply to an LOI); *Donald W. Kaminski, Jr.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 10707 (Enf. Bur. 2001), Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (ordering \$4,000 forfeiture for individual's failure to respond to an LOI).

²⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(2).

²⁸ 47 U.S.C. § 503(b)(2)(B). See also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

²⁹ 47 U.S.C. § 503(b)(2)(D).

³⁰ 47 C.F.R. § 1.80; *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"), *recon. denied* 15 FCC Rcd 303 (1999).

contributions to the USF. Prompt and full responses to Bureau inquiry letters are critical to the Commission's enforcement function. We therefore propose a total forfeiture against Blackstone of \$20,000 for failing to respond to Commission communications. This forfeiture amount is consistent with recent precedent in similar cases, where companies failed to provide responses to LOIs concerning compliance with the Commission's universal service rules despite evidence that the LOIs had been received.³¹

12. We also direct Blackstone to respond fully to the December 2004 and June 2005 LOIs within thirty days of the release of this order. Failure to do so may constitute an additional violation potentially subjecting Blackstone to further penalties, including potentially higher monetary forfeitures, the revocation of operating authority, and the disqualification of Luis Arias and any other Blackstone principal from the provision of any common carrier services without the prior consent of the Commission.³²

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Blackstone Calling Card, Inc., is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of \$20,000 for willfully and repeatedly violating Commission orders.

14. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE, Blackstone Calling Card, Inc., SHALL PAY the full amount of the proposed forfeiture currently outstanding on that date or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

16. IT IS FURTHER ORDERED, that pursuant to sections 4(i), 4(j), 218 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 218 and 403, and section 54.711 of the Commission's rules, 47 C.F.R. § 54.711, Blackstone Calling Card, Inc., shall fully respond to the October 2004 and June 2005 Letters of Inquiry sent by the FCC's Enforcement Bureau within 30 days of the release of this order.

³¹ See *BigZoo*, 20 FCC Rcd at 3955 (ordering \$20,000 forfeiture for failure to respond to LOI); *QuickLink Telecom, Inc.*, Order of Forfeiture, 20 FCC Rcd 14464 (Enf. Bur. 2005) (same).

³² See, e.g., *Business Options, Inc.*, Consent Decree, 19 FCC Rcd 2916 (2003); *NOS Communications, Inc.*, *Affinity Network Incorporated and NOSVA Limited Partnership*, Consent Decree, 2003 WL 22439710 (2003).

17. The response, if any, to this NOTICE OF APPARENT LIABILITY FOR FORFEITURE must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554 and must include the NAL/Acct. No. referenced above. E-mail address: william.davenport@fcc.gov.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. Requests for payment of the full amount of this NOTICE OF APPARENT LIABILITY FOR FORFEITURE under an installment plan should be sent to Associate Managing Director -- Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C., 20554.

20. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent, by certified mail/return receipt requested to Mr. Luis Arias, President, Blackstone Calling Card, Inc., 11600 N.W. 34th Street, Miami, Florida, 33178.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau